IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH, JAIPUR.

S.B. Civil Misc. Appeal No.3591/2005

Disc (Information Pvt. Ltd.
Vs.
Rajasthan Tourism Development Corporation, Jaipur

Date of Order : 19th September, 2006

HON'BLE MR. R.S. CHAUHAN, J.

Mr.Akhil Simlote, for the appellant.
Mr.Shiv Garg, for the respondent.

By Court:

The appellant has challenged the order dated 9.11.2005 passed by the Additional District & Sessions Judge, No.7, Jaipur City, Jaipur whereby he has dismissed the appellant's application under Order 9 Rule 13 of the Civil Procedure Code (henceforth to be referred to as 'the Code', for short).

The brief facts of the case are that the respondent Corporation had filed a suit for recovery of money. According to the plaint, the appellant Company

and the respondent Corporation had entered into an agreement for preparation of a report with regard to the development of tourism. For the said purpose, the respondent Corporation had agreed to pay Rs.2,20,000/- to the appellant Company. Out of the said amount, Rs.1,65,000/- was paid to the appellant. According to the agreement, the said report was to be submitted within forty-five days. However, the appellant failed to submit the said report within the stipulated period. Despite various correspondences and notices, the appellant neither submitted the report nor returned the said amount. Therefore, respondent Corporation had filed a suit for recovery of money against the appellant Company. On 6.10.2001 the appellant appeared before the Court. From 4.12.2001 to 20.07.2002, on five different occasions, the appellant sought time for filing the written statement. But, it miserably failed to do so. Therefore, on 30.08.2002 the trial court decided to proceed ex-parte. Vide judgment dated 01.11.2002, the suit was decreed in favour of the respondent Corporation ex-parte. From 01.11.2002 till 16.02.2005, the appellant did not file any application under Order 9 Rule 13 of the Code. But after a delay of

three years on 16.02.2005, the appellant submitted an application under Order 9 Rule 13 of the Code. According to the said application, the appellant had appointed one Shri Pavan Sharma as the officer-in-charge of the said case. However, subsequently, Shri Pavan Sharma left the Company without informing the Company about the status of the case. The appellant Company came to know about the ex-parte order when the execution proceedings had commended. Hence, they filed an application on 16.02.2005. After hearing both the parties, the learned Judge has dismissed the said application vide order dated 09.11.2005. Hence, this appeal before this Court.

Mr. Akhil Simlote, the learned counsel for the appellant, reiterated the facts narrated in the application under Order 9 Rule 13 of the Code, and mentioned above by this Court. According to him, the fault does not lie with the appellant Company, but lies with the employee who left without informing the appellant Company about the pendency of the case.

On the other hand, Mr. Shiv Garg, the learned

counsel for the respondent, had argued that the ample time was granted to the appellant to file his written statement. But the appellant failed to do so. Thus, the learned court had no option but to proceed ex-parte against the appellant Company. Moreover, the application under Order 9 Rule 13 of the Code had been filed beyond the period of limitation. No sufficient cause has been shown for the defendant's absence. Hence, he has supported the impugned order.

We have heard both the learned counsels for the parties and have perused the impugned order.

A litigant is bound to be vigilant to protect his own interests and rights. A company cannot take shelter behind its employee and claim that it had no knowledge of the case. The Company had appointed an advocate and had sought time for filing the written statement. Therefore, the cause shown by the Company is certainly not “a sufficient cause” for their sudden disappearance from the trial court. Considering their absence, the trial court had no option, but to proceed ex-parte against them. It is only when the executing

proceedings have commenced that in order to protect his skin, the appellant has rushed to the court for restoration under Order 9 Rule 13 of the Code. But the inordinate delay of three years has not been explained properly. Thus, the learned Judge was certainly justified in dismissing the said application. Therefore, this Court is not inclined to interfere with the impugned order. However, the learned counsel for the appellant states that the appellant is not financially sound and prays that he may be permitted to pay the aforesaid amount within sixteen months. The said limited prayer is reasonable. Therefore, we direct the appellant to deposit the said amount due to the respondent in sixteenth equal installments within a period of sixteen months from the date of pronouncement of this order.

(R.S. CHAUHAN), J.

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